

tailer Liquor Tax Stamps were then outstanding covering the premises in question. At all times while the liquor remained at such premises, it was 'held' at a place where it could be legally sold, but for its adulteration and misbranding. How long the distilled spirits in question remained at those locations after the flood subsided is not clearly established. However, from the widespread devastation of that national calamity, the Court can take judicial notice that it was several days after subsidation of the flood before there was any appreciable evacuation of goods from the area of destruction. From the agreed statement of facts, the only conclusion to be reached is that from the time the flood-waters descended until the liquor was removed from the above premises they became and were adulterated and misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, *supra*, while being 'held for sale.' The removal of such liquor from the premises where it was so held, after its adulteration and misbranding, did not withdraw such liquor from the ambit of that Act. 'The purpose of the Act is to safeguard the consumer by applying its requirements to articles from the moment of their introduction into interstate commerce, all the way to the moment of their delivery to the ultimate consumer, and the act embraces misbranding (and adulteration) while held for sale after shipment in interstate commerce.' *United States v. 4 Devices, etc.* (C. A. 10) 176 F. (2d) 652. Hence, the moment adulteration or misbranding occurs of an article which is subject to the Federal Food, Drug and Cosmetic Act, the Act becomes applicable thereto, to the end that the declared purpose of the Act be carried out, that is, that the ultimate consumer be thereafter protected therefrom. We believe such protection is afforded, whether the article is thereafter sold or given away. When adulteration or misbranding occurs within the meaning of the Act, then an article is immediately subject to forfeiture, and we do not believe that there can be any further or subsequent movement of the article on its way to an ultimate consumer, that would not be in violation of the Act. Cf. *United States v. Sullivan*, 332 U. S. 689; *Berger v. United States*, 200 F. (2d) 818; *United States v. Kocmond*, 200 F. (2d) 370. Section 301 (c) makes it unlawful to effect 'the delivery or proffered delivery' of an article that has become 'adulterated or misbranded' within the meaning of the Act, whether 'for pay or otherwise.' Hence, it is not the holding for sale of an article subsequent to adulteration or misbranding that gives rise to the right of the Government to have a forfeiture thereof declared under Section 304 (a) of the Act. (21 U. S. C. A. 334 (a).) It is the fact of adulteration or misbranding of the article 'while held for sale (whether or not the first sale) after shipment in interstate commerce.' Clearly, under the agreed and undisputed facts, the intoxicating liquor in question became adulterated and misbranded 'while held for sale.'

"Plaintiff's motion for summary judgment is by the Court sustained. Counsel prepare judgment entry accordingly. IT IS SO ORDERED."

Pursuant to the above opinion, the court, on January 18, 1954, entered a decree of condemnation against the distilled spirits and ordered that they be released under bond to be brought into compliance with the law. On February 19, 1954, the court entered an order for their destruction.

21302. Adulteration of green coffee. U. S. v. 249 Bags, etc. (F. D. C. No. 36391. Sample No. 75350-L.)

LIBEL FILED: February 15, 1954, Eastern District of Virginia.

ALLEGED SHIPMENT: From a foreign country, prior to February 1944.

PRODUCT: Green Coffee. 249 bags, each containing 132 pounds, and 1 bag containing 66 pounds at Norfolk, Va., in possession of Southgate Storage Co., Inc.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of rodent excreta; and, Section 402 (a) (4), the article had been held under insanitary conditions whereby it may have become contaminated with filth. The article was adulterated while held for sale after shipment in interstate commerce.

DISPOSITION: March 9, 1954. J. Aron & Co., Inc., New York, N. Y., having consented to the entry of a decree, judgment of condemnation was entered and the court ordered that the product be released under bond to be brought into compliance with the law, under the supervision of the Food and Drug Administration. The product was examined, with the result that 2,922 pounds were found unfit and were destroyed.

21303. Adulteration of green coffee. U. S. v. 36 Bags * * *. (F. D. C. No. 35942. Sample No. 55919-L.)

LIBEL FILED: October 29, 1953, Western District of Pennsylvania.

ALLEGED SHIPMENT: On or about November 2, 1951, from Orlando, Fla.

PRODUCT: 36 150-pound bags of green coffee at Latrobe, Pa., in possession of the Dilworth Co.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of insects and rodent excreta; and, Section 402 (a) (4), it had been held under insanitary conditions whereby it may have become contaminated with filth. The article was adulterated while held for sale after shipment in interstate commerce.

DISPOSITION: January 19, 1954. The Dilworth Co., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the court ordered that the product be released under bond for segregation of the unfit portion from the good portion under the supervision of the Food and Drug Administration. As a result of the segregation operations, 375 pounds of the product were found unfit and were destroyed.

CANDY AND SIRUP

CANDY

21304. Adulteration of candy. U. S. v. Charms Co. Plea of guilty. Fine, \$250. (F. D. C. No. 35804. Sample No. 59496-L.)

INFORMATION FILED: March 30, 1954, District of New Jersey, against the Charms Co., a corporation, Bloomfield, N. J.

ALLEGED SHIPMENT: On or about October 23, 1953, from the State of New Jersey into the State of Georgia.

LABEL, IN PART: (Box) "They're Pure! Charms Each Candy Wrapped"; (labels attached to product) "Coffee Charms Net Weight 1 Ounce."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in part of a filthy substance by reason of the presence of insect fragments, threads, wood splinters, hairs, bristles, and paint fragments; and, Section 402 (a) (4), the article was prepared under insanitary conditions whereby it may have become contaminated with filth.

DISPOSITION: May 10, 1954. The defendant having entered a plea of guilty, the court imposed a fine of \$250.

21305. Adulteration of chocolate-covered raisins. U. S. v. 1,669 Cartons * * *. (F. D. C. No. 36317. Sample No. 48165-L.)

LIBEL FILED: February 10, 1954, Eastern District of Louisiana.

ALLEGED SHIPMENT: On or about December 1, 1953, by the Blumenthal Bros. Chocolate Co., from Philadelphia, Pa.